



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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Ref: 8ENF-RC

April 21, 2009

Mr. Jon Nickel

ASARCO East Helena Plant

100 Smelter Road

P.O. Box 1230

East Helena, MT 59635

RE: 2009 Cleaning and Demolition Program and Interim Measures
Work Plan Addendum, Revised April 2009

Dear Mr. Nickel:

EPA Region 8 and the Montana Department of Environmental Quality (MDEQ) have reviewed the 2009 Cleaning and Demolition Program and Interim Measures Work Plan Addendum, revised April 2009. EPA is approving this work plan with the following conditions:

- 1) Due to the limited scope and small number of samples, EPA is requiring collection of duplicate samples at a frequency of 1 in 10 samples.
- 2) Additional samples are necessary from the demolition footprint and exposed soils areas, including a sample in the base of the Acid Plant Stack. These five additional sample locations are shown on the attached, modified Sheet 10.

In regard to your request for credit, the cleaning, demolition, sampling, waste hauling and placement, and capping activities covered by the approved 2009 work plan appear to qualify as work that can be considered "Capital Expenditure Response Costs" (Response Costs) as defined in footnote 3 (page 18) of the proposed *Consent Decree and Settlement Agreement Regarding the Montana Sites* (Settlement Agreement). Thus, should the Settlement Agreement become effective, ASARCO will be given a credit for expenditures for this work at the appropriate time.


Paragraph 6.c. of the Settlement Agreement, however, requires advance approval of activities and expenditures proposed to be Response Costs. To facilitate such approval, Paragraph 6.c. also requires ASARCO to timely provide an estimate of proposed expenditures. EPA and MDEQ requested such estimates in connection with the 2009 work plan development activities. ASARCO provided estimates for some, but not all, activities proposed in the 2009 work plan. Further, support for some of the estimates ASARCO provided was not substantial enough for EPA to develop an informed position.

Because EPA does not want 2009 work to be delayed, and based on the foregoing, EPA hereby agrees that expenditures for all work described in the approved 2009 work plan will qualify as Response

Costs, subject to EPA review of further cost estimates of ASARCO where needed. Thus, pursuant to section 6.c. of the Settlement Agreement, ASARCO is requested to provide EPA (and MDEQ) documentary or other acceptable support for estimated expenditures for 2009 work plan work on an ongoing and timely basis. By way of example, ASARCO can provide the agencies with information as it becomes available through the impending bidding processes. We are happy to meet with ASARCO at your earliest convenience to work out a mutually acceptable approach to reaching agreement on the dollar amount of these Response Costs.

A separate approval letter for the 2009 cleaning and demolition work is being issued by the MDEQ. Please contact me at (303) 312-6503, if you have questions on this letter or any related matter.

Sincerely,



Linda Jacobson
RCRA Enforcement

Enclosure

cc: Denise Kirkpatrick, MDEQ
Iver Johnson, MDEQ
Charles Figur, EPA-Legal

